

ENVIRONMENTAL PROTECTION COMMISSION
SPECIAL MEETING/PUBLIC HEARING
MINUTES
July 19, 2006

Wednesday, July 19, 2006 7:30 p.m.

Auditorium
Town Hall

Chairman Hillman called the meeting to order at 7:30 P.M. Commission Members Present: Peter Hillman, Craig Flaherty, Reese Hutchison, Ellen Kirby, and Pete Kenyon. (Susan Cameron recused herself).

Staff Present: Richard Jacobson

Court Reporter: Bonnie Syat

Public hearings:

Mr. Hillman opened the public hearing and read the hearing item at 7:37.

EPC-42-2006 Christopher and Margaret Stefanoni, 77 Nearwater Lane, proposing to construct an age restricted housing development and requesting a reconsideration of the extreme high water elevation and designation of the regulated inland wetlands.

Mr. Hillman said there are two issues which will be addressed during the hearing. First will be the request to re-examine the factual finding on the elevation of the Annual High Tide which determines whether the wetland area is a tidal or inland wetland. Mr. and Ms. Stefanoni are asking the Commission to reconsider this issue based on new material. If the Commission were to agree with the Stefanonis, the Commission will still review the application based on activities in an upland area which may impact Holly Pond. The Commission has retained James MacBroom of Milone & MacBroom to review this issue.

The second part of the hearing process will be to review the merits of the proposal. The new proposal for the "Noroton" has been available for review in the Planning and Zoning Department since May 17. The EPC has retained Tom Ryder of Land-Tech and, Joe Canas of Tighe & Bond to review the project. The application will be reviewed and decided upon based on the EPC regulations.

Mr. Hillman noted receipt of a letter from Attorney O'Hanlon. He asked that all parties submit materials in a more timely fashion and not the night of the hearing.

Ms. Stefanoni began her presentation. She said that they had a limited amount of time before the last public hearing to address the issue. She said Mr. Kenny set the elevation at 6.47 while their data indicates an elevation of 6.9 NGVD. She said Mr. Hammons measured elevations of 6.4 and 6.6 NGVD. Mr. Hammons and Mr. MacBroom both measured tide elevations inside and outside the weir.

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Mr. Hillman asked her to explain what she meant by weir. Ms. Stefanoni referred to exhibit 10 of the application showing a photo of the Holly Pond dam.

She said Mr. Hammons was not able to go out for every tide, therefore, they took photos of the utility pole and other markers including a stone monument.

Mr. Hillman asked what evidence has been submitted that is new. Ms. Stefanoni said Exhibit 7 and Exhibit 5 are new photos.

Ms. Stefanoni said that the definition in the statute allows the use of tidal gauges as done by Ocean Coastal Consultants and published tides which can be scientifically extrapolated to Holly Pond. She said that, based on a series of dates in 2005, 6.9 NGVD is a conservative elevation for Annual High Tide. Mr. Hillman said Ocean Coastal Consultants used the word "appropriate". Ms. Stefanoni said conservative was her word. Mr. Hillman said the data will speak for itself.

Mr. Hutchison asked what the elevation 6.9 would mean to the Stefanoni property. Mrs. Stefanoni said that all of the wetlands will be tidal. She said that the highest wetland elevation is 7.47. If the elevation is actually 7.9, then it is well above that. She said the OCC number is conservative because it uses an average number, not an extreme tide. She provided a copy of an e-mail from the D.E.P. saying they would accept 6.6 as the elevation. Mr. Hillman asked if they had been provided with all of the information the Commission received. Mr. Stefanoni said she will confirm that all of the Data was sent to Sue Jacobson.

Mr. Hutchison asked if the comments from Sue Jacobson considered weather events. He also questioned the relevance of the Sherwood Mill Pond data. Ms. Stefanoni said the Mill Pond may not be relevant but was included to demonstrate a case where the high tide was measured.

Mr. Stefanoni said the tide elevation which would determine the wetland to be tidal is 6.47 NGVD. He said there are tides 50 times per year at that elevation.

Mr. Hillman asked Mrs. Stefanoni to explanation why the Commission should reconsider their earlier decision. The Commission is currently being sued over this issue and they are being asked to consider the same types of tests and photos, etc. as the previous review. The Commission could be asked to re-consider again and the matter would never be final.

Ms. Stefanoni said the Commission had previously re-opened the matter because she has letters which indicate the wetlands are tidal. She said that as long as the tidal wetland elevation is determined to be below 7.47 N.G.V/D. the matter would be final.

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Mr. Kenyon asked if there were any new photos of the C.L. & P. pole on the same dates. Ms. Stefanoni said no because they did not have permission to go on the Land Trust property.

Ms. Stefanoni proceeded to introduce the application. She said the new proposal is very different from the previous proposal. There will one building instead of two and the total units will be 13 instead of 20. The amount of impervious surface has been reduced and parking is located under the building. The new proposal includes primary stormwater treatment.

Barry Hammons, P.E., L.S. presented the plans. He said they appeared before the Commission in January as a referral from Planning & Zoning. They are now appearing as an applicant. He described the existing conditions of the site is approximately one acre with a right-of-way to Holly Pond. He said the land is essentially cleared with an existing house, driveway, and lawn. There are no water quality features on the property at present. He showed an aerial photograph from 1953 which showed surrounding area as less developed. He said there is a 18" pipe in front of the Stefanoni property which has a contributing watershed of 30 acres.

Mr. Hammons discussed urban stormwater runoff and how to deal with it. He said Holly Pond is listed by the Connecticut DEP as impaired. He said they considered feasible and prudent alternatives in light of the potential impacts from increased impervious cover. He said the DEP Stormwater Manual states that watersheds with 10-25% impervious cover show signs of ecological stress. Greater than 25% cover results in significant impacts.

Mr. Hillman asked Mr. Hammons to submit copies of the references he cited. Mr. Flaherty clarified that between 10 and 25% results in "clearly apparent" ecological stress.

Mr. Hillman asked about the current impervious surface on the Stefanoni property. Mr. Hammons said it is about 10% including the gravel driveway. He discussed Exhibit 22 of the application which describes alternatives considered under section 7.9f of the regulations. Alternative one he said was the original application with 62.6% coverage. Alternative two eliminates a building and has more parking, to satisfy P&Z concerns, and has 55.5% coverage. Alternative three moves the majority of the parking under the building, moves the driveway to the rear, and has 47% coverage. Alternative four uses grass pavers for the fire access to the north and west of the building, with a storm water basin for the site runoff, and 36% runoff. Alternative five has 36% coverage with a redesigned storm water basin and drainage from the covered parking directed to the sanitary sewer as required by the DEP regulations.

Mr. Hillman asked if the no-build alternative was considered. Mrs. Stefanoni answered that there is a need for affordable housing in Darien and that they have the right to develop their property. Mr. Hammons said that the CT General Statutes allow for economic benefit.

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Mr. Hutchison asked for clarification regarding the 24% coverage number referenced in the application. Mr. Hammons said the 24% relates to the building coverage.

Mr. Hammons described the proposed stone wall to be four feet at the highest point and the closest activity to the 50 foot upland review area will be 9 feet. Between the retaining wall and wetland will be grass, an existing stone wall and an existing driveway.

Ms. Kirby asked how far the building will be to the 50 foot upland review area at the closest point. Mr. Hammons said 38 feet. Mr. Hillman asked how far the activity is from Holly Pond. Mr. Hammons said he will supply those numbers.

Mr. Hammons described the grading and utility plan. He said there are sanitary sewers available and there is capacity available for the project. He said water is available. Gas will be from underground propane and utilities will be underground. He said the total watershed to the wetland is about one half acre. The parking lot in front of the building will drain to a catch basin with a sump and to a Vortechnic unit and discharge to the forebay of the water quality swale for further treatment. Roof water which may generate a thermal increase will go to Cultec chambers designed for a 100 year storm.

Mr. Kenyon asked what level storm will overwhelm the system and what will happen. Mr. Hammons said the 100 year storm would overflow but it is not known what level storm would overwhelm it. He said the design is four to five times larger than what would normally be designed.

Mr. Hammons said the roof flow will go to the recharge galleries and eight inch overflow pipes will be directed to the forebay for energy dissipation. The swale will have a series of stone check dams and will be planted with grass to further reduce pollutants. Water from cars parked under the building will go to oil separators and then to the sanitary sewer. The swale will be underlain with a gravel layer to provide ground water recharge. Overflow from greater than a 100 year storm will go the storm drain. There is an extra one foot of freeboard above the 100 year storm overflow.

Mr. Flaherty asked about the hydrostatic effect of the recharge chambers and whether they could cause pressure against the building and damage the building. Mr. Hammons said the bottom of the chambers will be below the footing of the building and he does not anticipate any hydrostatic pressure. He was asked what the 100 year storm elevation is and he answered 15.5 feet.

Mr. Hammons said he would address section 7.5h of the regulations. He said the post activity monitoring plan is a difficult issue to deal with. He said there is a maintenance plan in the engineering report for future monitoring purposes. He suggested the Commission require as-builts of the project. He then discussed the erosion and sediment control plan.

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Mr. Hillman asked if, in his opinion, the effect of the storm water plan will be an enhancement. Mr. Hammons said the water flowing off the site at present is lower in quality than what is proposed.

Mr. Hammons said he would like to address the January 18, 2006 decision of the Commission. He referred to page 8 and an underlined phrase in the last paragraph regarding the magnitude of the project and the likely effect of the construction phase on wetlands and watercourse. He said he believes the new plan addresses this issue. He said that, in regard to page 9 item B, and the potential for surface flow to impact the wetland that he believes the impact will be insignificant. He said, with respect to page 10 item D and the drainage from the development affecting Holly Pond, that the evidence has been presented that there will be no adverse impact. He said the issue of page 10 item D, regarding the outflow of stormwater that has passed though the drainage system affecting Holly Pond, has been addressed. He said the water from the site will be potable before it leaves the site.

Dr. Richard Orson addressed the Commission. He provided his Curriculum Vitae which is updated from the one with the application. He said he was asked to review the plan for environmental impact. He said his overall assessment is that the application is top rate for a residential application. From an ecological viewpoint the, the majority of the water will be from roof runoff. The thermal impacts are not as significant as people think. Infiltrators will receive the water which is essentially clean. For a residential site a high standard is being set.

Mr. Orson said the closest point to Holly Pond from an ecological standpoint is the wetland. There will be no impact on the wetland from the project. He cannot say that any development will not have any impact. Is it an acceptable impact with the engineering? Yes. There will be insignificant impacts which could probably not be measured.

He said the plantings in the basin will provide variety in the habitat which will reflect the hydrology in the basin. Basin will be dry which will provide better treatment. He said he reviewed the landscaping plan and there are no potentially invasive species.

Mr. Flaherty asked about the mature trees on the property. He said there are five trees which appear to be impacted and he asked if the applicant could look at alternatives. He asked about the wall on the southerly edge of the property and if it can be built properly. Additional information should be provided because the design is critical to functioning of the swale. He also requested the applicant look at a different arrangement of the roof leader inflows to the Culverts. Mr. Hammons said they will respond to these questions.

Mr. Flaherty asked about the location of the deep tests which show 60" to ground water and is the bottom of the Culverts close to groundwater. Mr. Hammons said hole #3 which is the closest to the Culverts did not have groundwater.

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Mr. Flaherty asked about the erosion and sediment controls during construction. He said that during construction there will be nearly an acre of bare earth. He said the detention basin should be built first. Mr. Hammons said the basin would be built first. Mr. Flaherty asked that the sequence be spelled out more clearly and an inspection should be required before work continues. Mr. Hammons asked what the mechanism is for monitoring a site in Darien. Mr. Flaherty said an independent site monitor may be required. Mr. Hammons said that would be appropriate. Mr. Flaherty suggested that a double row of silt fence may be required and a detail of a saw tooth arrangement should be added. Mr. Hammons suggested that as areas of the soils are stabilized they rip out the double row and install a single saw-tooth row. Mr. Flaherty asked that the potential temporary impacts be addressed in the phasing plan.

Mr. Hillman asked who will maintain the Noroton after construction and who will maintain the system. Mr. Hammons said the Condominium association and he suggested the maintenance be bonded.

Chairman Hillman asked if there were members of the public who wished to speak.

Mrs. Nara of 1 Juniper Road asked for clarification that the Commission is not making a decision tonight. Mr. Hillman told her the Commission would not close the hearing tonight and would not decide the application tonight.

Mr. Nara of 1 Juniper Road said that there is concern of many of the neighbors about the environment and Holly Pond. He said that scientists cannot comprehend everything.

Mr. Hillman said the meeting will be continued until August 30 at 7:30 p.m.

Ms. Stefanoni asked about a date for submitting responses to the Commission questions. Mr. Hillman asked for any submittals at least one week prior.

Ms. Kirby asked for more information on the grass pavers. She asked if they can be plowed for emergency access and are there special measures which need to be considered with their use since the project is proposed for senior housing. Mr. Hammons said they would provide more information and manufacturing data.

The Commission continued the public hearing until August 30 at 7:30 p.m.

The meeting adjourned at 10:35